

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY HATELEY,
Plaintiff,

v.

FORD MOTOR COMPANY,
Defendant.

Case No. 23-cv-00790-EMC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

Docket No. 19

In December 2022, Plaintiff initiated this suit, asserting claims for breach of warranty under the Song-Beverly Act. In September 2023, the case settled after Plaintiff accepted a Rule 68 offer made by Defendant. The Rule 68 offer left open the issue of attorneys' fees and costs to be litigated, with Plaintiff (in essence) being deemed the prevailing party. Under the Song-Beverly Act, if the buyer prevails,

the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

Cal. Civ. Code § 1794(d) (emphasis added). In other words, the statute "requires the trial court to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable." *Nightingale v. Hyundai Motor Am.*, 31 Cal. App. 4th 99, 104 (1994). One court has noted that the intent behind the statute is "to make sure attorney fees awards would be based on actual time expended, rather than a percentage of the recovery, so

1 that pursuit of consumer warranty cases would be economically feasible.” *Robertson v. Fleetwood*
2 *Travel Trailers of Cal., Inc.*, 144 Cal. App. 4th 785, 819-20 (2006).

3 In the case at bar, Plaintiff seeks: (1) \$42,900.50 in fees and (2) \$5,756.47 in
4 costs/expenses. Defendant has not challenged the amount of costs/expenses, and the Court also
5 deems such reasonable. The remaining dispute between the parties concerns fees. Defendant
6 argues that Plaintiff should be awarded only \$15,310.00 in fees.

7 In assessing the fee request, the Court takes into account both the hourly rates of the
8 attorneys as well as the number of hours incurred. Defendant has contested counsel’s hourly rates,
9 but Plaintiff has submitted evidence to support the rates. That evidence includes a fee survey and
10 rulings made by other federal and state courts.¹

11 As for the number of hours, the Court finds that the bulk of the hours incurred are
12 reasonable. However, as Defendant notes, some of the hours are not warranted – *e.g.*, some
13 (though not all) involve administrative tasks, and some are excessive given the specific work
14 conducted. In addition, the number of timekeepers (five total) is unusual given the relative
15 straightforwardness of this case, and there are some instances in which this staffing has given rise
16 to inefficiencies. Taking into consideration these circumstances, the Court finds is appropriate to
17 take a 10% “haircut” to the fee request. *Cf. Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
18 (9th Cir. 2008) (in civil rights case, stating that “the district court can impose a small reduction, no
19 greater than 10 percent – a ‘haircut’ – based on its exercise of discretion and without a more
20 specific explanation”). This reduction to the fee request of \$42,900.50 results in a fee award of
21 \$38,610.45.

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26 ¹ The Court overrules the relevance objection to the rulings made by other courts. Although
27 Plaintiff has not provided all of the circumstances underlying the other cases, they involve
28 individuals suing motor companies and appear to be lemon-law-type cases as here. To the extent
Defendant raises a hearsay objection, it had an opportunity but offered nothing to effectively rebut
or impugn the information. The evidence of rates meets the residual exception for hearsay under
Federal Rule of Evidence 807.

1 Accordingly, the Court hereby grants Plaintiff's motion and awards Plaintiff (1)
2 \$38,610.45 in fees and (2) \$5,756.47 in costs/expenses. The total award is **\$44,366.92**.

3 This order disposes of Docket No. 19.

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5 **IT IS SO ORDERED.**

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7 Dated: June 17, 2024

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11 EDWARD M. CHEN
12 United States District Judge
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